IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9639 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANISH AMOOLBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9639 of 2003

M/S THAKKAR ASSOC. for Petitioner No. 1-2

MR PR ABICHANDANI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/12/2003

ORAL JUDGEMENT

Rule. Mr. P.R. Abichandani, Ld. APP

waives service of rule on behalf of the respondent. At the request of the counsels for the parties matter is taken up for final hearing today itself.

2. This application is filed for quashing the proceedings of C.R. No. I-555 of 2003 registered at Ellisbridge Police Station, Ahmedabad for alleged commission of offences made punishable under sections 297, 307, 114 of the Indian Penal Code (for short 'IPC') and sections 104 and 177 of the Motor Vehicles Act.

3. Allegation against the applicants is that on the night between 18th and 19th June, 2003 i.e. shortly after midnight of 19th at 1.10 a.m., the applicants drove the car at full speed and when attempt to stop the car was made by the police, the speed was increased with a view to fatally knock them down. It is further alleged that the message was relayed to various check posts in the city by wireless by police control at Ellisbridge and at the Satellite police station again an attempt was made to stop the car but even at that time the vehicle was driven in a manner endangering the human life and according to the allegation even an attempt to run over the concerned policeman was made. It appears that this happened two more times. Ultimately on that very day at about 2.40 p.m. the F.I.R. came to be lodged against the present petitioners, which was registered as C.R. No. I-555 of 2003.

4. It is submitted by Mr. P.M. Thakkar, the senior advocate appearing for the petitioners that the petitioners are young boys prosecuting their studies. So far petitioner no. 1 is concerned, he has received scholarship from the University of North Texas for studying for the course of Degree of Bachelor of Business Administration. He has further submitted that so far petitioner no. 2 is concerned, he has been studying in Australia for the last 3 years and has obtained degree in B.B.A. at Elles Zander Institute of Technology. According to Mr. Thakkar, both the petitioners are from respectable families and they would not entertain any intention to cause death of a policeman on duty. He, therefore, submits that even prima-facie the petitioners have not committed any offence muchless the offence as stated above. To substantiate his contention, Mr. Thakkar has also produced Acceptance Certificate relating to petitioner no. 1 on record issued by the GISMA Business School dated June 06, 2003.

4.1. As against that, Mr. P.R. Abichandani, Ld. APP produces on record the report of Police

Inspector, Ellisbridge Police Station and submits that considering the fact that on four occasions an attempt was made to run over the policemen who were trying to stop the petitioners shows that there was intention to fatally knock them down with a view to make good their escape. He, therefore, submits that even prima-facie there is a case of offence punishable u/Ss. 307 and 279 of the IPC against the petitioners.

5. Having given careful consideration to the contents of the application and record annexed therewith and also to the rival submissions, it clearly appears that both the petitioners who are young students and on the night of the incident the occupants of the car in question drove their vehicle in a very rash and negligent manner and when they were signaled to stop their vehicle, they did not only stop it, but increased the speed and managed to escape. It also appears that this happened not once but on four occasions. However, contents of the F.I.R. as well as the report submitted by Mr. Abichandani do not make out a case for committing offence made punishable u/S. 307 of the IPC. It is very clear from the complaint itself that when the police gave a signal to stop the car, the petitioners, it appears, got panicky and increased the speed of the car with a view to run away from there. Since the message was relayed on wireless, four attempts were made to stop them at different places by the police. However, the petitioners could manage to dodge the police by driving the vehicle at an excessive speed to such an extent that even the policemen got scared and allowed the vehicle to pass. This would hardly constitute an offence u/S. 307 of the IPC as considering the background of the petitioners, their age coupled with the fact that they do not have any previous animosity with the police, there was hardly any reason for them to cause fatal injury to any of the policemen. It is also clear that with a view to avoid their arrest, they drove the vehicle with such a speed that it endangered human life; however, it is difficult to swallow that they had even intended to cause death of any of the policemen, who were at different check posts. Merely when in the state of panicky some wrong or even rash decision may have been taken by the petitioners to drive the vehicle with excessive speed, it would not mean that they had intention to cause death of any person. Even prima-facie the story of the prosecution seems to be improbable.

6. In that view of the matter, even if the contents of the F.I.R. and other material on record are taken to be true, it would not constitute an offence u/S.

307 of the IPC. Hence the complaint for that offence is required to be quashed and it is hereby ordered to be quashed.

6.1. So far the offence u/S. 279 of the IPC is concerned, it is very obvious that when the vehicle was driven at such an excessive speed and rash manner, it is bound to endanger the human life. Hence, at this stage Mr. Thakkar does not press this petition for the quashing of the other offences which are there on record.

7. In view of the above, this petition is partly allowed. The complaint u/S. 307 of the IPC is hereby quashed. The prosecution for rest of the offences will remain. Rule made absolute to the aforesaid extent.

[AKSHAY H. MEHTA, J.]

* Pansala.